

# Notice of Allowability

Application No.

10/040,502

Examiner

Gentle E. Winter

Applicant(s)

ACKER ET AL.

Art Unit

1746

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to \_\_\_\_\_.
2. ☐ The allowed claim(s) is/are \_\_\_\_\_.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 11/24/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claims 3 and 4 are cancelled.

### *Reasons for Allowance*

1. The following is a statement of reasons for the indication of allowable subject matter:
2. The proper terminal disclaimer has been approved, and as such, the Obviousness-Type Double Patenting rejection is properly overcome.
3. With respect to the anticipatory rejection based on United States Patent No. 4,810,597 to Kumagai et al., the same fails to teach each and every limitation of the instant invention. Specifically, Kumagai fails to contextually teach sensing more than one operating characteristic. Furthermore Kumagai does not teach using at least two of the sensed operating characteristics to generate a control signal, which is disclosed as an essential element of claimed invention, as described in independent claim 5.
3. Further, while the references, when taken as a whole, teach many of the claim limitations, the references, and the prior art of record generally, apparently fails to provide the requisite motivation for making the instantly claimed combination.

Art Unit: 1746

4. Specifically, USSR Author's Certificate SU 1,610,522 A1 is not drawn to a DMFC, nor is it apparent that the system and associated method of this reference rely on two different operating characteristics. Similarly, United States Patent No. 6,673,480 to Wilkinson et al. fails to disclose a variable methanol concentration method. The Wilkinson does include a sensor, but it is not clear that the system acts to control methanol concentration based on the sensed criteria.

5. For the at least the foregoing reasons, claims 1, 2, and 5 are believed to recite patentable subject matter.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E Winter whose telephone number is 571-272-1310. The examiner can normally be reached on Monday through Friday 7AM-4PM.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

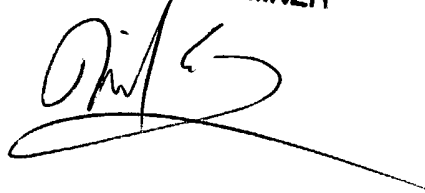
8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions on

Art Unit: 1746

access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gentle E. Winter  
Examiner  
Art Unit 1746

**MICHAEL BARR**  
**PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read "Michael Barr", with a long horizontal flourish extending to the right.